

Appln No. 10/618,033
Amdt date March 26, 2009
Reply to Office action of November 26, 2008

REMARKS/ARGUMENTS

In the Office action dated November 26, 2008, the Examiner objected to claim 2 as allegedly failing to further limit base claim 1. While applicant disagrees that "tubular" refers only to a cylindrical shape, Applicant has canceled claim 2 in an effort to expedite allowance of the claims.

The Examiner also rejected claims 1-4, 7, 8 and 13-15 under 35 U.S.C. §102(b) as allegedly anticipated by Selmon, et al. (U.S. Patent No. 6,638,247). In making this rejection, the examiner points to Figures 3-6 and 14D, and asserts that "Selmon clearly indicates a sharp tip in Figures 14A-D" and that "Selmon discloses that the tip (296) is sharp and capable of puncturing regardless of its disadvantages or intended uses." Office action, pages 7-8. However, Selmon does not disclose a sharp tip adapted to puncture tissue. As clearly stated in Selmon, the depicted devices are *blunt end* members, and describes the jaw members 42 (which the Examiner appears to assert create a sharp tip) as *blunt end* jaw members. Column 8, lines 58-60; column 11, lines 5-8 and 31-33; column 12, lines 53-56. As Selmon clearly states that the devices and their jaw members have *blunt ends*, the devices do not have sharp distal ends adapted to puncture tissue, as presently claimed.

Moreover, contrary to the Examiner's assertion, Selmon nowhere discloses that tip 296 is sharp. Rather, Selmon merely discloses that tip 296 is *pointed*. Column 17, lines 44-49. That the tip may be pointed does not constitute a disclosure that the tip is sharp and adapted to puncture tissue, as presently claimed. Additionally, Figure 14D depicts a single tissue expansion member. Thus, tip 296 is the tip of a single tissue expansion member. However, the tissue expansion assembly disclosed in Selmon includes a pair of tissue expansion members that work together. In the closed position, the tips 296 of the two tissue expansion members meet, making the resulting tip far less pointed. As such, the Examiner's reliance on the depiction of tip 296 in Figure 14D is misplaced.

Furthermore, Selmon emphasizes the need for a vascular device for crossing an arterial occlusion without perforating the blood vessel. Column 2, line 66 to column 3, line 2; column 3,

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lines 36-39. Given the teachings in Selmon that device is a *blunt* end member, that the device is used to spread or expand tissue, and that it should not perforate the vessel, the tip (296) depicted in Figure 14D could not be construed as being sharp and adapted to puncture tissues, as the Examiner suggests.

Also, Selmon fails to teach or suggest a ring slidably mounted to the tubular body, wherein the distal ends of the segments of the segmented surface are hingedly attached to the ring, as presently recited. The Examiner appears to assert that component 52 of Selmon is akin to the recited ring, and that components 64 are akin to the segments of the segmented surface which are hingedly attached to the ring. However, components 64 are described in Selmon as elbows which "allow space for deformation of the jaw sections 42 along an axis." Column 12, lines 47-53. Additionally, component 52 is described as a support member that is "*fixedly* attached to the distal end of the catheter." Column 12, lines 38-20 (emphasis added). As components 64 are not hingedly attached to component 52, and as component 52 is not slidably mounted to the tubular body, those components are not akin to the segments of the segmented surface and the ring recited in independent claims 1 and 18. Accordingly, independent claims 1 and 18, and all claims dependent therefrom, including claims 3, 4, 7, 8 and 13-15, are allowable over Selmon.

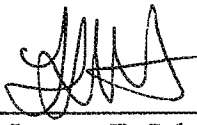
The Examiner also rejected claims 9-12, 14-19, 23 and 24 under 35 U.S.C. §103(a) as allegedly obvious over Selmon either alone or in combination with one or more of Wallace (U.S. Patent No. 6,254,628) and Devos, et al. (U.S. Patent No. 6,099,511). However, independent claims 1 and 18, are allowable over Selmon, as discussed above. Neither Wallace nor Devos remedy the deficiencies of Selmon, as neither reference teaches or suggests a sharp distal end adapted to puncture tissue or a ring slidably mounted to the tubular body, wherein the distal ends of the segments of the segmented surface are hingedly attached to the ring. Therefore, independent claims 1 and 18, and all claims dependent therefrom, including claims 9-12, 14-17, 19, 23 and 24, are allowable over Selmon, Wallace and Devos.

Claims 1, 3, 4, 7-19, 23 and 24 now remain pending in this application. By this amendment, applicant has canceled claim 2. In light of the above remarks, applicant submits that

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all of pending claims 1, 3, 4, 7-19, 23 and 24 are in condition for allowance. Applicant therefore respectfully requests reconsideration and a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, Applicant invites the Examiner to contact Applicant's counsel at the number indicated below.

Respectfully submitted,
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